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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,327	11/12/2003	Charles D. Lennox	MED03-11	6437

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EXAMINER

JOHNSON III, HENRY M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/706,327

Applicant(s)

LENNOX ET AL.

Examiner

Henry M Johnson, III

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 3-19, 23-38, 41-44, 47, 48, 51 and 52 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 20, 21, 39 and 40 is/are allowed.
- 6) ☒ Claim(s) 53-56 is/are rejected.
- 7) ☒ Claim(s) 45, 46, 49 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 061404 092004 0131
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities:

On page 17, line 17, it is stated that the jets are formed on the outer wall. On page 18, line 27 it is stated the jets are on the inner wall.

On page 18, line 20, the word be should be deleted.

Appropriate correction is required.

### *Claim Objections*

Claims 45 and 46 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1 and 2. Claims 49 and 50 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 20 and 21. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3739

Claims 53 and 54 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,406,447 to Thrash et al. Thrash et al. discloses a device for delivery of a treatment fluid (liquid) from a reservoir (Fig. 1, # 18) to a treatment site (abstract) using a delivery pump (Fig. 1, # 14) that provides the liquid to a flexible containment member that may be modified to enclose virtually any treatment site (Col. 10, lines 16-17). The hood configuration (Fig. 2) is capable of use with tissue and clearly has an inner surface, an outer surface and an edge. The containment member further is disclosed as having recovery channels around an edge in communications with a suction pump (Fig. 1, # 16) for retrieval of the liquid and sealing the member to the site (abstract). The device is capable of cooling by using a cooled liquid in the reservoir, although cooling is an intended use not critical to the structure of the invention. A plurality of delivery ports (jets) is disclosed (Col. 10, lines 21-22). Ports for the aspiration channel are disclosed (Fig. 4A, #34). A system is disclosed with a reservoir, delivery pump (positive gage pressure) and a suction pump (negative gage pressure) with the

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,406,447 to Thrash et al. Thrush et al. is discussed above, but does not disclose a housing with the reservoir and pumps. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide a housing because Applicant has not disclosed that a housing

Art Unit: 3739

provides advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with or without a housing because such a housing has no significant impact on the structure and no impact on the function.

### ***Allowable Subject Matter***

Claims 1, 2, 20, 21, 39 and 40 are allowed.

### ***Reasons For Allowance***

The prior art of record does not disclose or fairly suggest a device for cooling a head with fluid channels and jets for providing a fluid to a head and two sealing members defining an aspiration channel therebetween that, in conjunction with a suction source, both seals and removes fluid from a treatment area. Thrash et al. teach a device for fluid delivery and removal from a treatment area with structures that can be interpreted as two seals; however, the unique arrangement of an aspiration channel formed between the two seals is missing. The aspiration channel of the invention is unique and could provide an improved sealing function to a head.

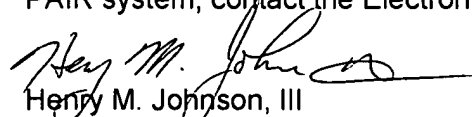
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739